two Acts contain no express exception of unlawful possession in a security area, it cannot be supposed that Parliament having manifested in the Internal Security Act, 1960, its intention that in the special circumstances where unlawful possession occurred in a security area the penalty must be death and not any punishment less severe, nevertheless by an Act in general terms and passed in the same session, departed from that intention.

In their Lordships' view, the provisions of the Arms Act, 1960, and the Firearms (Increased Penalties) Act, 1971, which deal with the offence of unlawful possession of firearms or ammunition *simpliciter* are not applicable where the possession occurs in a security area. In their Lordships' view the appellant was correctly charged in the instant case; and his ground of appeal under the third head fails.

For these reasons it follows that the charge against the appellant was good in law but that his trial upon that charge was a nullity.

Their Lordships will report to His Majesty the Yang di-Pertuan Agong that the conviction and sentence of the appellant on November 17, 1976 should be set aside and the case remitted to the Federal Court for further consideration as to whether or not to order a new trial.

Order accordingly.

Solicitors: *Hatchett Jones & Kidgell; Stephenson Harwood.*

SINGAPORE REPORTS

STANLEY NG PENG HON v. AAF PTE LTD.

[O.C.J. (Choor Singh J.) April 26, 1978]
[Singapore — Suit No. 4611 of 1975]

Employment — Resignation under compulsion — Dismissal — Notice — Damages for wrongful dismissal.

Labour Law — Dismissal — Whether adequate notice — Resignation under compulsion.

In this case the plaintiff had been employed as manager of the defendants' Singapore office. He was asked to resign by the Company's manager for the Far East Region, who at the same time gave him a statement of the amounts payable to him. The plaintiff claimed damages for wrongful dismissal.

Held: (1) a resignation under compulsion is no resignation in law. On the facts of this case the plaintiff was dismissed from his employment with the defendant company;

(2) no notice was given to the plaintiff and in the circumstances three months' notice was reasonable. Had the defendant company given the plaintiff three months' notice he would have been entitled to a bonus of one month's salary under the terms of his contract of service. In the result the plaintiff should be given judgment for $10,977 subject to the requisite Central Provident Fund deductions from the amount of three months' salary and the bonus.

Case referred to:-

(1) *Stephenson* v. *The London Joint Stock Bank Ltd.* (1902) 19 T.L.R. 138; C.A. 20 T.L.R. 8.

CIVIL SUIT.

Andrew Ee for the plaintiff.

Denis Singham for the defendant.

Choor Singh J.: The plaintiff's claim in these proceedings is for damages for wrongful dismissal.

The facts which are not in dispute are these. The plaintiff is a professional engineer. He graduated from the Singapore Polytechnic in 1963 and prior to his employment by the defendant Company he worked as technical manager with Jardines and later as sales engineer with the General Electric Company. The defendant Company which is incorporated in America has an office in Singapore and has business interests in other parts of South East Asia.

In September 1973 the plaintiff was employed by the defendant Company as manager of the defendant Company's Singapore office. On the evening of October 16, 1975 Mr. Frank O'Callaghan, the defendant Company's manager for the Far East Region called on the plaintiff. He went into the office occupied by the plaintiff and there was some conversation between the plaintiff and O'Callaghan the exact nature of which is in dispute but the next morning, the plaintiff wrote the following letter to O'Callaghan: —

Oct. 17, 1975

Miss H.N. Low — Secretary AAF Pte. Ltd.
for onward transmission to:
Mr. F.E. O'Callaghan — Manager I.S.D.
AAF International Lvl, Ky. U.S.A.
Gentlemen,

Following my resignation on Oct. 16, as manager of AAF Pte. Ltd. I would like to draw your attention that the following monies are outstanding to me:

(1) Expenses Reports up to Oct. 16, 1975	S$ 511.00
(2) One month formula Bonus	3,150.00

Ref: My appointment letter of Sept. 11, 1973, '... In addition, it is our policy to pay the one month formula bonus that is customary in Singapore on December 15 which is based on twelve months' service during the Company's fiscal year.'

Total sum due to me	S$3,661.00

Please note that I have completed my services as manager of AAF Pte. Ltd. for the 12 months of Fiscal Year ending September 30, 1975, hence my entitlement. In my present circumstances, could you please authorise this payment to me as soonest as possible.

I requested Mr. Kwan and Miss H.N. Low to mail to me the list of books AA-Sing has ordered and upon checking, I will endeavour to return whatever are in my possession. I pointed out that many of the books, I have not used and should still be in AA-Sing's premises. The fact that these books cannot be located does not mean I have used them. Other people in the premises could also found use of them. Regarding some competitive filter brochures I may have had from time to time, these were on loan to me from my personal friends, which I returned, therefore AAF has no claim on these.

I am awaiting your letter acknowledging my period of service in AA-Sing, which you promised me and trust this is forthcoming soon.

I still regard Mr. O'Callaghan as a fair and honest person and look forward to receive the above sum as fair settlement. Thanking you.

Truly,
Sgd. Stanley P. H. Ng."

On the evening of October 16, 1975 the plaintiff was paid $5,114 by O'Callaghan. This sum according to the defence was made up as follows: —

Particulars

(a) 16 days' pay in October 1975 - - -	$1,626.00
(b) 3 weeks' pay in lieu of notice - - -	2,134.00
(c) 12½ days' leave pay - - - - -	1,880.00
	$5,640.00
Less C.P.F. on items (a) and (c) - - -	526.00
	$5,114.00

The defendant Company maintains that the plaintiff having resigned from his appointment on October 16, 1975 and having been paid on that day all that was due to him, the plaintiff's claim should be dismissed with costs.

The plaintiff on the other hand alleges that he did not resign; that he was dismissed and that the termination of his employment amounts to wrongful dismissal in that he was not given reasonable notice and he claims the sum of $10,977 as damages: —

Particulars

(a) 3 months' salary in lieu of notice - -	$ 9,450.00
(b) one month's bonus on completing 2nd fiscal year ending September 30, 1975 - - -	3,150.00
(c) reimbursible expenses - - - - -	511.00
	13,111.00
Less receipt of 3 weeks' pay in lieu notice -	2,134.00
	$10,977.00

The real issue in this case is whether or not the plaintiff resigned from his employment and in order to determine this issue it is necessary to ascertain what exactly took place in the plaintiff's office on the evening of October 16, 1975 when O'Callaghan called on him.

The plaintiff's version in this. O'Callaghan came into his office and said, "Stanley, I have to ask you for your resignation." He asked for reasons, but O'Callaghan refused to disclose any reason. O'Callaghan then handed him an envelope and said, "Stanley, I think you will find everything there.". Plaintiff maintains that he was shocked. He pleaded with O'Callaghan but to no avail. He was told to go home in the Company's car and to return it to the Company's service station the next day. The plaintiff claims that he never had any intention of resigning; that the so-called resignation was a dismissal forced upon him and that in the letter he wrote the next morning he wrongly used the word "resignation" instead of "termination of employment". He had written that letter in order to praise O'Callaghan and get a good testimonial from him.

O'Callaghan on the other hand states that he does not recollect asking plaintiff for his resignation. He says that he mentioned to the plaintiff that it was better for him to look for other work for which he was more suited than his capacity as manager of the defendant Company. O'Callaghan admits that the plaintiff did ask him to explain specifically what were the problems and that he declined to do so. He says that he declined to do so because he wanted to give the plaintiff the opportunity to resign. He admits that if the plaintiff had not resigned he would have dismissed him.

O'Callaghan's intention to dismiss the plaintiff is also quite apparent from the fact that when he entered the plaintiff's room he had with him an envelope containing $5,114 together with a statement showing how this sum was made up and he eventually handed this envelope to the plaintiff and left his room.

I accept the plaintiff's version. I have no doubt at all that when O'Callaghan asked for the plaintiff's resignation, he was in effect dismissing the plaintiff from his appointment. It was merely a polite way of telling the plaintiff that he was being dismissed. He had gone into the plaintiff's office with his mind made up to dismiss him and had with him an envelope containing a sum of money which he thought was all that the plaintiff was entitled to.

In my judgment, on the evidence in this case, it would be quite erroneous on my part to hold that the plaintiff resigned on his own volition. There was quite clearly pressure on him. His resignation was in fact demanded. O'Callaghan admits that he gave no reason although the plaintiff did ask him to specify what the problem was. As no reason was given, the plaintiff had no reason to resign.

A resignation obtained under compulsion is no resignation in law. This is clear from the decision in *Stephenson* v. *The London Joint Stock Bank Ltd.*[1] In that case, it appeared that the plaintiff entered the service of the bank as clerk on February 14, 1879, at which time he signed a form of rules and regulations for granting retiring allowances to the officers

of the bank. The second rule provided that such officer retiring with the consent of the directors should receive an allowance at the rate of one-third of the annual amount of his salary at the time he so retired. Under the fifth rule no retiring allowance whatever was to be granted to any officer who was dismissed from the service of the bank. In October 1899, the plaintiff endorsed a promissory note which was made by a Mr. Horace Sedger. This fact came to the knowledge of the defendants owing to the note being discounted at one of the branch banks of the London Joint Stock Bank, and thereupon the defendants called upon the plaintiff for an explanation. The plaintiff stated that he had been promised the sum of £25 by Mr. Horace Sedger for endorsing the note, and that he was unaware that Mr. Sedger was other than a person of sound financial position. On November 16, 1899, the plaintiff received a letter from the secretary to the bank in regard to the matter of the promissory note. The letter contained the words "you are required to resign your appointment to the bank," and on November 20 the plaintiff wrote to the secretary resigning his appointment.

The plaintiff then sought to obtain a declaration that he was entitled to a pension from the bank on retiring from his position as clerk. At the trial before Wright J. counsel for the plaintiff contended that his resignation in the circumstances was "with the consent of the directors" and that the plaintiff was not dismissed from his appointment, because requiring a person to resign was not the same as dismissing him. Wright J. found for the defendant bank. In giving judgment he said that the question to be decided was not an easy one. He felt that there was great force in counsel's contention that the plaintiff had not been dismissed. In official life it was open to employers to invite a man to retire, to require him to retire, or to dismiss him. He was doubtful if the facts of the present case amounted to dismissal. But the real question was whether or not the plaintiff had brought himself within the words "retiring with the consent of the directors". The words in the letter from the secretary were "you are required" and he thought it would be an abuse of language to say that a man who retired in that way, under compulsion, did it with the consent of the directors.

The plaintiff appealed. In the Court of Appeal, (20 T.L.R., 8) the Lord Chancellor, in giving judgment said, "Mr. Justice Wright had come to a perfectly correct decision. They had to look at the whole of the facts, and, doing so, there could be no doubt but that the plaintiff was dismissed. The use of polite instead of preemptory language did not alter the fact". The Lord Chief Justice and Lord Justice Cozens-Hardy concurred.

On the facts of the present case, I hold that the plaintiff was dismissed from his employment with the defendant Company. The next question is, was he given adequate notice? Counsel for the defendant Company concedes that in the circumstances of this case, having regard to the fact that the plaintiff was a professional engineer and was employed as manager of the defendant Company's Singapore office, three months' notice could be considered a reasonable notice for the purpose of terminating his services. Had the defendant Company given the plaintiff three months' notice on October 16, 1975, he would have become entitled to a bonus of one month's salary under the terms of his contract of service. In the result the plaintiff succeeds in his claim of $10,977 subject to the requisite C.P.F. deductions from the amount of the three months' salary and the bonus. There will be judgment for the plaintiff for the sum found due after the said deductions. The defendant Company will also pay the plaintiff the costs of this action as taxed on the High Court scale.

Claim allowed.

Solicitors: *Andrew Ee & Co.; Rodyk & Davidson.*

WONG WAI CHENG v. ATTORNEY-GENERAL OF SINGAPORE

[O.C.J. (Chua J.) September 1, 1978]

[Singapore — Originating Motion No. 26 of 1977]

Arbitration — Application to set aside award of arbitrator on ground that arbitrator had made errors of law on the face of the award — Contract — Fundamental breach — Exception clause — Admissibility of pre-contract negotiations and statements — Evidence Act (Cap. 4), s. 92.

Contract — Fundamental breach — Exception clause — Admissibility of pre-contract negotiations and statements to vary written contract — Evidence Act (Cap. 4), s. 92.

Evidence — Written contract — Admissibility of pre-contract negotiations and statements to vary written contract — Evidence Act (Cap. 4), s. 92.

The claimant had entered into a contract with the Government of Singapore for the carrying out of certain road works on certain lands. Parts of the land were covered by a Chinese cemetery, by squatters and by government bungalows. It was provided in the contract that possession of the site "as complete as may be reasonably possible" should be given to the claimant on or before February 1, 1971 and the claimant was to complete the works on or before January 31, 1973, subject nevertheless to the provisions for extension contained in the contract. There was a delay in giving the claimant possession of the site and on June 5, 1973 the applicant stated that he would cease work as the P.W.D. was in fundamental breach of the contract. The dispute between the parties was referred to arbitration. The arbitrator found that the claimant was entitled to damages in the sum of $517,925.08 and that the counterclaim of the government failed. The Attorney-General thereupon applied by motion for an order that the award of the arbitrator be set aside and the claimant be restrained from enforcing the award. Reference was made to the exception and protecting provision in Clause 32(b) of the contract.

Held: (1) the arbitrator was correct in implying a term in the contract that the claimant should be able to proceed with the contract works in a normal, commercial and forseeable manner. In this case in view of the delay in giving possession of the site to the claimant, there had been a fundamental or repudiatory breach;

(2) the arbitrator was correct in his view that the evidence of pre-contract negotiations and statements made by or on behalf of either party and not being within the contract documents was inadmissible under section 92 of the Evidence Act to contradict, vary, add to or subtract from the terms of the contract;

(3) the arbitrator was correct in stating that it is well established that a party who is in fundamental breach cannot rely on exceptions or protecting provisions in the contract;

(4) there was no substance in the complaints of the respondent and therefore the action to set aside the award must be dismissed.